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No. 84-896

In the Supreme Court of the United States

OCTOBER TERM, 1984

In re HENRY ANDERSON,

Petitioner.

EDWIN J. PETERSON, Chief Justice,
Supreme Court of the State of Oregon,

Respondent.

On Petition for a Writ of Mandamus to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Assuming, without conceding, that petitioner's complaint is properly before the Court, does a state supreme court's refusal to order the reopening of a nine-year-old suit for specific performance, brought in a state trial court, deny petitioner due process of law, equal protection of the laws, or petitioner's Seventh Amendment right to trial by jury, "in suits at common law"?

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BRIEF FOR RESPONDENT IN OPPOSITION

Petitioner's "Jurisdictional Statement," his citations to relevant constitutional and statutory provisions, and his statement of the case are accepted, insofar as they are not inconsistent with the matter set forth below.

SUPPLEMENTAL STATEMENT OF THE CASE

From the petition for a writ of mandamus and the petition for rehearing filed in the Oregon Supreme Court, it appears that in 1975, petitioner Anderson was the defendant in a suit for specific performance of a land sale contract, brought by a Mr. and Mrs. Fisher. (Petition for Rehearing, at 9). Anderson represented himself in this suit and requested a jury trial. The request was denied (Petition for Mandamus, at 1-2). On June 9, 1975, the Circuit Court for Baker County, Oregon, entered a decree in favor of the surviving plaintiff, Mrs. Fisher, (*Id.*, at 15). Anderson apparently did not appeal.

In recent years, Anderson has initiated several proceedings, *in propria persona*, in an effort to cause the 1975 decree against him to be set aside. In the present case, he petitioned the Oregon Supreme Court, on or about June 27, 1984, for a writ of mandamus, commanding the circuit court to vacate its 1975 decree and grant him a new trial, in which his alleged right to a trial by jury in a suit for specific performance would be honored (Petition for Rehearing, at 5). On August 31, 1984, the Oregon Supreme Court denied the petition. On September 7, 1984, Anderson petitioned for rehearing; and

rehearing was denied on September 25, 1984.[1] Anderson now seeks a writ of mandamus from this Court, commanding the Oregon Supreme Court, or its Chief Justice, to "vacate and expunge" the decree against him in the 1975 case of *Fisher v. Anderson*, on the ground that he was denied his constitutional right to a trial by jury, due process of law, and equal protection of the laws in a suit for specific performance, tried in Oregon's trial court of general jurisdiction.

REASONS FOR DENYING THE PETITION

Anderson contends that he was denied his Seventh Amendment right to a trial by jury, and his Fourteenth Amendment right to due process of law and equal protection of the laws, in a 1975 suit for specific performance, brought in the courts of the State of Oregon. To right this alleged wrong, he asks the Court to issue a writ of mandamus to the Oregon Supreme Court, or its Chief Justice, under the authority conferred upon it by 28 U.S.C. § 1651. Assuming, without conceding, that Anderson's choice of procedure is correct, or that his petition should be treated as a petition for certiorari, the claims urged in the petition are without merit.

Anderson was not denied his Seventh Amendment right to a trial by jury. The Seventh Amendment right to a jury trial in civil cases is not applicable to the states. *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211 (1916). Even if it were, specific performance is an equitable remedy; and there is

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[1] Anderson is not correct when he states, at pages 4 and 6 of his petition to this Court, that rehearing in this case (Oregon Supreme Court No. S30961) was denied on September 18, 1984. On that date, the court denied Anderson's petition for mandamus in another case, Oregon Supreme Court No. S31061. *Compare* U.S. S. Ct. Petition, Ex. 1, *with id.*, Ex. 2.

no constitutional right to a trial by jury in a suit in equity. *See Parsons v. Bedford*, 3 Pet. 433, 446-47 (1830).

Nor was Anderson denied due process or equal protection in the 1975 suit he wishes reopened. The mere fact that the suit was tried to the court, rather than to a jury, does not constitute a denial of due process of law or equal protection of the laws; and Anderson's petition does not suggest any other basis for his claim that the Due Process and Equal Protection Clauses of the Fourteenth Amendment were violated in this case.

CONCLUSION

For the above reasons, the petition should be denied.

Respectfully submitted,

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